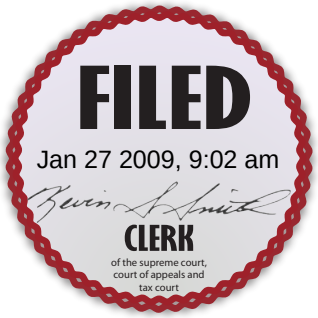

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IN THE COURT OF APPEALS OF INDIANA

ROBERT HARDESTY,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 45A05-0804-CR-234
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Clarence D. Murray, Judge
Cause No. 45G02-0602-FB-43

January 27, 2009

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant Robert Hardesty appeals the ten-year sentence imposed by the trial court following Hardesty's guilty plea to Dealing in Cocaine,[1] a class B felony. Hardesty argues that the trial court abused its discretion by finding his criminal history to be an aggravator and by failing to consider his recent attempts to turn around his life as a mitigator. Finding no error, we affirm.

FACTS

On April 3, 2006, Hardesty was staying at a Motel 6 in Hammond. He was contacted by a confidential informant who was working with the Gary Police Department. Hardesty agreed to meet the informant in the parking lot outside the motel, where Hardesty sold the informant .57 grams of cocaine in exchange for $50. After the controlled buy took place, police officers arrested Hardesty.

On April 13, 2006, the State charged Hardesty with class B felony dealing in cocaine. Hardesty failed to appear for hearings on September 19 and October 3, 2006, at which time the trial court issued a warrant for Hardesty's arrest. Two months later, on December 8, 2006, Hardesty was arrested and then released on a modified bond on December 19, 2006. On February 16, 2007, Hardesty again failed to appear and the trial court issued another warrant for his arrest. Hardesty was again arrested on March 16, 2007. The trial court set Hardesty's jury trial to begin on February 25, 2008. In early February 2008, Hardesty began to attend weekly counseling sessions in a program called Christian Intervention. On February 14, 2008, at the final pretrial hearing, Hardesty

[1] Ind. Code § 35-48-4-1.

pleaded guilty as charged under an agreement that left the sentence to the trial court's discretion.

Following the March 18, 2008, sentencing hearing, the trial court found Hardesty's prior criminal history and the nature and circumstances of the crime—that he was selling drugs out of a hotel, thereby endangering the public safety—to be aggravating circumstances. It found Hardesty's guilty plea to be a mitigator. Concluding that the aggravators and mitigators were in equipoise, the trial court imposed the advisory sentence of ten years, with two years suspended to probation. Hardesty now appeals.

DISCUSSION AND DECISION

Hardesty argues that the trial court abused its discretion by finding his criminal history to be an aggravator and failing to find his attempts to turn his life around to be a mitigator. Trial courts are required to enter sentencing statements whenever imposing a sentence for a felony offense. Anglemyer v. State, 868 N.E.2d 482, 490 (Ind. 2007), clarified on reh'g, 875 N.E.2d 218 (2007). The statement must include a reasonably detailed recitation of the trial court's reasons for imposing a particular sentence. 868 N.E.2d at 490. If the recitation includes the finding of aggravating or mitigating circumstances, then the statement must identify all significant mitigating and aggravating circumstances and explain why each circumstance has been determined to be mitigating or aggravating. Id. We review sentencing decision for an abuse of discretion. Id. A trial court may abuse its discretion by entering a sentencing statement that includes reasons for imposing a sentence not supported by the record, omits reasons clearly supported by the record, or includes reasons that are improper as a matter of law. Id. at 490-91.

Hardesty first contends that the trial court should not have found his criminal history to be aggravating. In 1996, Hardesty was convicted of class D felony operating while intoxicated. The conviction was later reduced to a misdemeanor in 2000. In 2006, Hardesty pleaded guilty to class D felony maintaining a common nuisance.[2] PSI p. 4. He was on probation for that offense when he committed the instant offense. Fifty-three-year-old Hardesty admitted to the probation officer conducting the presentence investigation that he has used alcohol and marijuana since he was fifteen years old and that he began using cocaine regularly in his twenties. He also admitted that he continued to use marijuana until 2006 and that he used cocaine while he was on bond for this offense. Under these circumstances, notwithstanding the fact that he has a relatively minor criminal history, we find that the trial court did not abuse it discretion by finding Hardesty's criminal history to be an aggravator. See Roney v. State, 872 N.E.2d 192, 207 (Ind. Ct. App. 2007) (noting that the defendant had "admitted to using illegal drugs throughout his life, indicating that despite his minor criminal history, he was not leading a law-abiding life").

Next, Hardesty argues that the trial court abused its discretion by declining to find his attempts to turn his life around to be a mitigating factor. Specifically, Hardesty argues that the trial court should have credited the fact that he had "made significant steps towards turning his life around by attending a drug-abuse program and by caring for his

[2] There is some dispute about whether he pleaded guilty to maintaining a common nuisance as a class D felony or as a misdemeanor, but even if we accept Hardesty's contention that it was a misdemeanor conviction, our conclusion is not altered.

elderly mother." Appellant's Br. p. 7. Although these actions are commendable, Hardesty did not begin attempting to "turn[] his life around" until the eve of trial. Id. Before he began helping his mother and attending counseling sessions, Hardesty was using cocaine and routinely evading the trial court's authority by failing to appear and participate in pretrial proceedings. It was for the trial court to evaluate Hardesty's character and alleged rehabilitation. Under these circumstances, we cannot say that the trial court abused its discretion by refusing to find Hardesty's attempts to turn his life around to be a mitigating factor.

The judgment of the trial court is affirmed.

NAJAM, J., and KIRSCH, J., concur.